

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL- ]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

Action: Final Rulemaking.

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SUMMARY: With this action, EPA is establishing baseline production and consumption allowances for chemicals that EPA has added to the list of class I ozone-depleting substances in a Federal Register notice signed by the Administrator on November 30, 1993. These substances are methyl bromide and hydrobromofluorocarbons (HBFCs). EPA is now establishing baseline production and consumption allowances for producers

and importers of methyl bromide and HBFCs derived from data submitted to the Agency in response to a section 114 data collection request issued on July 27, 1993. The data collection request required companies to report the amounts of these substances that they produced, imported, exported, transformed or destroyed in 1991.

EFFECTIVE DATE: This rule is effective on January 1, 1994.

ADDRESSES: Public material relevant to this rulemaking are contained in Air Docket No. A-92-13 at: U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20640. The public docket room is located in room M-1500, Waterside Mall (Ground Floor). Docket No. A-92-13 is the same docket as that used for the rule to add methyl bromide and the HBFCs to the class I list, which was published on December 10, 1993.

Materials relevant to the allowances rulemaking have been placed in a new and separate section of docket No. A-92-13, which is segregated from the sections of the docket containing material relevant to the December 10 listing rule. The data on which the consumption and production allowances promulgated in this allowances rule are based were submitted under a claim of confidentiality. That data is therefore confidential, pending final determination by the Administrator, and, therefore, is not available in the docket for public inspection.

FOR FURTHER INFORMATION CONTACT: Peter Voigt at (202) 233-9185, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation, 6205J, 401 M Street, S.W., Washington D.C. 20460.

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**I. Background**

A. Newly Listed Substances.

EPA has added methyl bromide and HBFCs to the list of class I substances under section 602 of the Clean Air Act in a final rule signed by the Administrator of EPA on November 30,

1993, 58 FR 65018 (December 10, 1993). As explained in the listing regulation, under title VI of the Clean Air Act, a newly listed substance is automatically subject to the § 604(a) phaseout schedule unless:

(1) The Administrator accelerates that schedule pursuant to section 606; or

(2) The Administrator determines that the section 604(a) schedule is unattainable and extends that schedule pursuant to section 602(d).

For reasons explained in the final rule, the Agency determined that the section 604(a) schedule is unattainable for methyl bromide and extended that schedule under section 602(d) to a freeze until the termination date. The regulations freeze production and consumption levels of methyl bromide at 1991 levels beginning on January 1, 1994 until January 1, 2001, when production and consumption will be eliminated. For HBFCs, the regulations freeze production and consumption at 1991 baseline levels beginning on January 1, 1994 until January 1, 1996, when production and consumption will be eliminated.

Under EPA's rules, controls on the production and consumption of regulated substances operates through a company-specific allowance system. Companies are prohibited

from production and consumption beyond the amount for which they hold unexpended allowances. See 40 CFR § 82.4.

Section 607 of the Clean Air Act provides that the Administrator, by September 15, 1991, was to promulgate rules providing for the issuance of allowances for the production and consumption of class I and II substances and governing the transfer of such allowances. EPA promulgated rules issuing allowances for then-listed substances on March 6, 1991 (56 FR 9518). Section 607(b) and (c) specify that EPA's rules are to provide for trading of allowances on an ozone depletion weighted basis.

EPA's obligation to issue company-specific allowances is inherent in the allowance and trading scheme under the Act. As explained in the July 27 information collection request (58 FR 40048), the section 604 phaseout provision and the section 607 allowance and trading provision were drafted against the regulatory backdrop of EPA's implementation of the Montreal Protocol under authority existing prior to the Clean Air Act Amendments of 1990 (formerly section 151(b)). The Agency had implemented the Protocol production and consumption limits through company-specific allowances. See 53 FR 30566 (August 12, 1988). Enactment of sections 604 and 607 continued this approach, and the Agency's current regulations comport with

it. (See regulation to implement 1992 and later production and consumption limits under section 604 (57 FR 33754, July 30, 1992)). EPA, through recent rulemaking, has adopted the same approach for methyl bromide and the HBFCs in its final listing regulation. EPA must issue company-specific allowances for methyl bromide and the HBFCs in order to implement the production and consumption freeze applicable to these substances. EPA received no comments on the November 9, 1993 allowances proposal.

#### B. Baseline Production and Consumption Allowances.

To establish these allowances, EPA exercised its information collection authority under section 114(a) of the Clean Air Act to require companies to submit information on the amount of methyl bromide and HBFCs that they produced, imported, exported, transformed or destroyed in 1991. 58 FR 40048 (July 27, 1993). EPA has used the information collected to calculate the company-specific production and consumption allowances. On November 9, 1993, EPA proposed baseline production and consumption allowances for methyl bromide and HBFCs (58 FR 59630). EPA received no comments on the November 9 proposal. EPA has taken final action adding methyl bromide and the HBFCs to the class I list of ozone-depleting

substances, 58 FR 65018 (December 10, 1993). With this rule, EPA is establishing the company-specific production and consumption allowances for these substances in order to implement the production and consumption limitations beginning January 1, 1994.

A company's production allowances are equal to its domestic production minus the amount that is transformed and destroyed by it or by other companies. Amounts of class I substances that are recycled are also excluded from the calculation of production allowances. For producers that also import, transformation is allocated proportionately between domestic production and imports. Second-party transformation not attributed to a specific producer is allocated proportionately among all producers, based on production share.

Company-specific consumption allowances for each chemical consist of a company's production allowances, as calculated above, plus its imports, minus its exports. Amounts imported for transformation and for destruction are excluded from the import total. Exports that are not attributable to a specific company are proportionately allocated among all producers based on production share. In addition, imports of used and recycled ozone-depleting substances are excluded from the

calculation of allowances.

## **II. STATUTORY AUTHORITY**

EPA is authorized by section 604(c) of the Act to promulgate regulations implementing the phaseout of ozone-depleting substances, 57 FR 33754 (July 30, 1992). Pursuant to section 607, the phaseout is to be implemented through an allowance system. EPA also has broad authority under section 301(a) "to prescribe such regulations as are necessary to carry out [its] functions under this chapter" and broad authority under section 615 to promulgate regulations respecting the control of substances that may reasonably be anticipated to affect the stratosphere.

As explained above, EPA must promulgate company-specific production and consumption allowances in order to implement controls on methyl bromide and the HBFCs under title VI of the Clean Air Act. In addition, such controls are necessary to implement the controls on these substances that will become mandatory under the Montreal Protocol beginning in 1995. The reader is referred to the March 18 notice proposing to add these substances to the class I list for a full discussion of the Protocol Parties' agreement to controls on these substances at their Copenhagen meeting. See 58 FR 15014.



Section 614(b) provides that title VI "shall not be construed, interpreted or applied to abrogate the responsibilities or obligations of the United States to implement fully the provisions of the Montreal Protocol."

### **III. NOTICE PRIOR TO EFFECTIVE DATE .**

The effective date of this rule is January 1, 1994. Since title VI controls on production and consumption are implemented on an annual basis, the allowances must be effective January 1, 1994 in order to achieve the environmental benefits associated with controls in the 1994 calendar year.

EPA believes that the time between publication of this final rule and January 1, 1994 is sufficient for industry to comply with the annual production and consumption limits beginning January 1, 1994. EPA believes that the amount of time provided before the rule becomes effective is appropriate for several reasons.

First, EPA explained in its November 9 proposal that it was proposing production and consumption allowances at that time in order that the allowances would be available in time if the Agency were to establish a freeze beginning January 1, 1994. The comment period was to close no earlier than December

9, 1993, making it clear that EPA intended to provide less than 30 days notice of the final allowances prior to January 1, 1994. EPA received no comments on this or any other aspect of the November 9 proposal.

Second, only very small changes to the proposed allowances have been made, based on late receipts of data from companies that transformed methyl bromide in 1991. As a result, the affected companies had reasonably precise information regarding the anticipated level of allowances since the November 9 proposal, and they have been on notice since November 30, 1993, (when the Administrator signed the final rule listing methyl bromide and the HBFCs) that EPA was freezing production beginning January 1, 1994. The allowances contained in the final rule do not reflect substantial changes.

Third, EPA believes that compliance with the annual production controls necessitates less advance notice than other regulations for which compliance is required on a continuous basis or over a shorter period. Compliance with an annual limit on production and consumption is not likely to be violated until a significant part of a given year has elapsed. Steps during the first few days of 1994 that will prove necessary to comply for the entire calendar year should be

minimal.

EPA notes that the general requirement under 5 U.S.C. §553(d) (the Administrative Procedure Act), that publication or service of a substantive rule be made not less than 30 days before it becomes effective does not apply here. Section 307(d)(1) of the Clean Air Act specifically applies to regulations under title VI of the Clean Air Act and provides that "[t]he provisions of section 553 through 557 and section 706 of title 5 shall not, except as expressly provided in this subsection, apply to actions to which this subsection applies." Nowhere does subsection 307(d) expressly provide that section 553(d) of title 5 applies. Even if section 553(d) were to apply, EPA believes that the environmental benefits associated with controls in 1994 and the limited need for advance notice in this situation constitute good cause under section 553(d)(3) of title 5 to provide less than 30 days notice following publication. In any case, EPA has taken steps to provide notice of this final action to the regulated industry as soon as possible upon signature of the rule and prior to publication.

#### **IV. SUMMARY OF SUPPORTING ANALYSES.**

##### **A. Executive Order 12866**

Under Executive Order 12866 [58 FR 51,735 (10/4/94)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to lead to a rule that may:

(1) have an annual effect on the economy of \$100 million or more or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

#### B. Regulatory Flexibility Act.

The Regulatory Flexibility Act, 5 U.S.C. 601-612, requires that federal agencies examine the impact of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis. Such an analysis is not required if the head of the agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b). The Administrator believes that this regulation will not have a significant impact on a substantial number of small entities and has concluded that a formal regulatory flexibility analyses is unnecessary.

This regulation establishes allowance levels for the production and consumption of the newly listed class I ozone-depleting chemicals. Baseline allowances in and of themselves do not impose any adverse costs on producers or importers. As the administrative mechanism for implementing regulations that

are effective on January 1, 1994, the overall regulatory impacts on small business are impacts of the scheme as a whole and have been addressed in that rulemaking. See 58 FR 65018 at 65060 (December 10, 1993). The Administrator certifies that this rule will not have a significant impact on a substantial number of small entities.

#### C. Paperwork Reduction Act

The information collection requirements governing the addition of newly listed substances to the list of class I ozone-depleting substances and the regulatory changes to section 604 of the Act has been submitted to OMB as required by section 35 D of the Paperwork Reduction Act, 44 U.S.C 3501 et. sec. Comments regarding these requirements have been received and considered in the development of the final rule to implement changes in section 604.

The promulgation of the regulation establishing company-specific allowance levels will not generate additional recordkeeping and reporting requirements. As a result, no information collection request was prepared and submitted to OMB.

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**List of Subjects in 40 CFR Part 82**

Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Imports, Ozone layer, Reporting and recordkeeping requirements, Stratospheric ozone.

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Date

Carol M. Browner  
Administrator

40 CFR Part 82 is amended as follows:

PART 82 - PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671-7671q.

2. Section 82.5 is amended by adding paragraphs (f) and (g) to read as follows:

§ 82.5 Apportionment of baseline production allowances.

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(f) For Group VI controlled substances:

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Controlled		Allowances
substance	Person	(kg)
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Methyl		
Bromide	Great Lakes	
	Chemical Corporation	19,945,788
	Ethyl	
	Corporation	8,233,894
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(g) For Group VII controlled substances:

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22B1-1	Great Lakes	
	Chemical Corporation	46,211

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3. Section 82.6 is amended by adding paragraphs (f) and (g) to read as follows:

82.6 Apportionment of baseline consumption allowances.

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(f) For Group VI controlled substances:

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Controlled		Allowances
substance	Person	(kg)

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Methyl

Bromide	Great Lakes	
	Chemical Corporation	15,514,746

	Ethyl	
	Corporation	6,379,906
	AmeriBrom Inc.	
3,524,393		
	TriCal Inc.	109,225

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\_\_\_\_\_ (g) For Group VII controlled substances:

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HBFC

22B1-1	Great Lakes	
	Chemical Corporation	40,110

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